IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 583

CECIL B. SANNER and MARY W. SANNER,
*Petitioners*

v.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL,
*Respondent*

## PETITION FOR REHEARING

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## PETITION FOR REHEARING

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Petitioners pray that this Court grant a rehearing of its order of December 9, 1968 denying the petition for certiorari herein, the time for filing this petition was extended to and including February 3, 1969 by order of this Court signed by Associate Justice William J. Brennan, Jr.

### REASONS FOR GRANTING WRIT

Petitioners wish to bring to the attention of the Court other and more substantial constitutional grounds available to them although not previously presented, pursuant to the provisions of Rule 58(2) of this Court.

Pursuant to the Constitution of Maryland of 1867, presently in effect (App. 16),* Article 8, Declaration of Rights relating to Separation of Powers; Article III, Section 48 relating to control of corporations by the Legislature; and the decisions of the highest Courts of Maryland it will be unequivocally shown that the doctrine of *charitable immunity* is a *total nullity.*

Further, it will be shown, that because the doctrine is a *total nullity,* that the application of the doctrine to petitioners is a most flagrant example of a denial of due process under the Constitution of Maryland, and a denial of due process and equal protection of the laws under Article XIV, Section I of the Constitution of the United States.

Additionally, it will be shown that there is a wide and substantial public interest in a definitive decision in the instant case, which will substantially affect the doctrine of charitable immunity as invoked in other states. This will be accomplished by showing an almost precise and parallel flagrant violation of constitutional prohibitions in sister states which unequivocally manifest a denial of due process and equal protection of the laws.

Initially, with respect to respondent, it was chartered in 1853 by Acts of the Legislature, Chapter 274, in which charter it was specifically provided *inter alia* that respondent could . . . *sue and be sued* (R.A. 4, 5), and by Section 9 of that charter that any repeal or amendment was reserved to the General Assembly (R.A. 7, 8).

The present Constitution of Maryland (App. 16), was adopted in 1867, and by Article 8 of the Declaration of Rights mandatorily provides for the *separation of powers* of the Legislative, Executive, and Judicial branches of government. Further, Article III, Section 48 of the Maryland

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*"R." refers to record. "A." refers to Appendix in original petition. "P." refers to original petition for writ, and "App." refers to appendix herein.

Constitution reserves control over corporation *exclusively* to the Legislature.

The first case imposing the doctrine of charitable immunity in the State of Maryland was the case of *Perry v. House of Refuge*, 63 Md. 20 (1885), which at the time of the decision was functioning under a charter granted by the Acts of the Legislature of 1830, Chapter 64, (App. 16) which provided *inter alia* that this private corporation had the power to *sue and be sued.* This provision has existed through subsequent charter amendments.

By the Constitution of Maryland, Article III, Section 48 the *exclusive power* and right to *alter, amend* or *repeal* a charter of a corporation *is reserved to the Legislature.*

When the Court of Appeals of Maryland imposed the doctrine of charitable immunity, in 1885, in the case of *Perry v. House of Refuge*, 63 Md. 20, by saying that the defendant therein could not be sued in tort—the court was transgressing a constitutional mandate of separation of powers, Article 8, Declaration of Rights (App. 16), and usurping powers exclusively reserved to the Legislature, Article III, Section 48 (App. 17).

That this is the law in Maryland is not only manifest from the above cited constitutional provisions, but by pronouncements on the precise point by the Court of Appeals of Maryland.

> "The right to amend the charters of all corporations created under the general corporation law of this State is *expressly reserved to the Legislature*, Section 48, Article 3 of the Constitution." *Hodges v. Baltimore Union Pass. Ry. Co.*, 58 Md. 603 (1882).

Thus, when the court in the *Perry case, supra,* announced its decision it modified the charter of the defendant corporation therein, because the *court felt that it was desirable that defendant corporation should be immune from responsibility in tort.* The court was flagrantly usurping powers *exclusively legislative.*

That the courts can not usurp strictly legislative powers is specifically spelled out in the Constitution in Article 8 of the Declaration of Rights, and where the point has been raised, the courts have been diligent in preventing usurpation of the rights of one department of government by another.

The function of the court *is not to make but to interpret and apply the laws,* the courts have no power to legislate and they can not usurp the functions of the Legislature. *Leser v. Garnett,* 139 Md. 46, aff'd 258 U.S. 130 (1921).

> "This Court *cannot enact legislation* but can only administer justice according to existing law. *Lickle v. Boone,* 187 Md. 579 (1947)
>
> "We have no authority in a case where the Legislature has spoken clearly, to distort its words and *usurp the function of the legislative branch of government by making judicial law.* It is true that real intent must prevail over literal intent. But that rule of construction is adopted only when the literal words of a statute may be something that the Legislature could not possibly have meant. It does not apply when the only basis for a construction other than a literal one are either that the Legislature should not have said what it did, or that it would not have said it, had it been in possession of all the facts. We cannot assume to say what the Legislature should have said, nor can we say whether it knew the facts or not, nor whether it would have decided differently had it known them. *All we can determine* in this case *is what the Legislature did say. And there is no ambiguity here. Clark v. Tawes,* 187 Md. 195 (1946).
>
> "And neither courts nor municipal officers may engraft an extended plan or policy, *however desirable or benevolent it may be, upon the statute, as the Legislature has passed it. Duncan v. Graham,* 142 A. 593, 155 Md. 507 (1928), *Hopper v. Jones,* 178 Md. 429."

Thus, in the *Perry* case, *supra,* the court in 1885, fifty-five years after the legislature granted the charter to defendant permitting it *to be sued,* and *three years* after the case of *Hodges v. Baltimore Union Pass. Ry. Co.,* 58 Md. 603 (1882) usurped legislative powers and meddled with the charter of the corporation.

Further, the court persists in transgressing the mandate of separation of powers with respect to similarly legislatively structured corporations, and this very respondent, by granting tort immunity; in the face of charter provisions; in the face of Article 8 of the Declaration of Rights; in the face of Article III; Section 48; and in the face of the above quoted decision of the Court of Appeals of Maryland that clearly proclaim a *hands off doctrine* where the pronouncements of the Legislature are *clear and unambiguous.* [See *Loeffler v. Trustees of Sheppard & Enoch Pratt Hospital,* 100 A. 301, 130 Md. 265 (1917); *Howard v. South Baltimore General Hospital,* 62 A.2d 574, 191 Md. 617 (1948); *Howard v. Bishop Byrne Council Home, Inc.,* 238 A.2d 863 (1968)].

The doctrine of charitable immunity crept into the law of Maryland because of *a complete failure of the Court to look to the legislatively created charters, a complete failure to look to the Constitution of Maryland, and a complete failure to look to its own decisions on separation of powers and exclusive corporate control by the legislature.*

The language of the legislature in the charter of The House of Refuge (App. 16), defendant in the case of *Perry v. The House of Refuge,* 63 Md. 20, and the language of respondent's charter are *clear, unequivocal, unambiguous* and *positive*—these corporations, and similarly structured organizations, *can be sued in tort!*

Thus the doctrine of *charitable immunity* in the State of Maryland was, from its inception, and is a *total nullity.*

To deprive petitioners their rights as clearly spelled out in respondent's charter (R.A. 4, 5), in the Declaration of Rights Article 19 (P. 3), Article 20 (P. 3), and Article 23

(P. 4) and to perpetuate a *totally void doctrine* contrary to Article 8, Declaration of Rights of Maryland (App. 16) and Article III, Section 48 of the Constitution of Maryland (App. 17) is a most flagrant violation of due process and equal protection of the laws as guaranteed by Article XIV, Section 1 of the Constitution of the United States.

The doctrine of charitable immunity is an anachronism in the law that has and is adversely affecting the rights of all men. A refusal to render a decision in this case will not only deny constitutionally guaranteed rights to petitioners, but will adversely affect all men, as so well stated by President John F. Kennedy, June 11, 1963:

> "This nation . . . was founded on the principle that all men are created equal and that the rights of every man are diminished when the rights of one man are threatened." *[Quoted by Justice Thurgood Marshall when Solicitor General, "Law and Equality" 19th Annual Tyrrell Williams Memorial Lecture of the School of Law of Washington University, March 8, 1967.]*

That a refusal to hear this case will diminish the rights of all men will be shown by the following brief analysis manifesting the wide and substantial public interest vested in this case:

## THE PUBLIC INTEREST

The self-same judicial legislation transgressing *mandatory constitutional provisions* that occurred in Maryland are also manifest in other jurisdictions, adhering to charitable immunity. And, in each of these instances, it is submitted, that the doctrine of charitable immunity is equally a denial of due process of laws and equal protection of the laws as guaranteed by those various state constitutions, as well as a violation of those guarantees set forth in Article XIV, Section 1 of the Constitution of the United States.

In Wymoing the Constitution of 1890 (App. 17-19), presently in effect, provides for *separation of powers* of govern-

ment, Article II. Further, control of corporations is exclusively reserved to the legislature, Article X, Sec. 1. Of first magnitude is the provision of Article X, Sec. 2, which mandatorily prevents *any law* being passed *limiting damages* against a corporation causing *death or injury to anyone.*

The first case to impose charitable immunity was decided in 1916, *twenty-six years* after the adoption of the constitution. *Bishop Randall Hospital v. Hartley,* 24 Wyo. 408, 160 P. 385. This corporation was a *private corporation* organized under Chp. 280 Com. Stat. of Wyoming of 1910. Among its many powers the charter provided that the copo-ration was empowered to *sue and be sued.*

Notwithstanding Article II and Article X, Secs. 1 and 2 the Wyoming Judiciary unconstitutionally transgressed its powers and legislated such private corporations immune from tort liability. And, by this unconstitutional judicial act denied to persons in Wyoming the constitutional guarantees of Article I, Secs. 6 and 8.

This judge-made law still denies recovery in tort for the negligence of the corporate servants, agents or employees.

Thus, as in Maryland, the aforementioned judicial legislation was and is not only a transgression of legislative prerogatives, *and a nullity,* but was and is a flagrant denial of due process and equal protection of the laws under the Wyoming Constitution and Article XIV, Section 1 of the Constitution of the United States.

In Colorado the Constitution (App. 19-20) was adopted in 1876, and by Article III provides for *separation of powers,* and by Article XV, Sections 2 and 3 corporate control is exclusively a legislative domain.

Approximately *forty-nine years* after the adoption of the Colorado Constitution the judiciary imposed the doctrine of charitable immunity in the case of *St. Mary's Academy, etc. v. Solomon,* 77 Colo. 463, 238 P. 22, 42 A.L.R. 964, adopting the so-called *trust fund theory.* Here again was judicial transgression of mandatory constitutional provi-

sions. Despite these constitutional provisions the court held, that though a charity could be sued, all of the assets of the *judicially so-called charity* are immune from attachment or satisfaction of the judgment. Obviously such a judgment is a hollow victory, totally meaningless, and a denial of the guarantees of the Constitution of Colorado. This is still the law in Colorado.

Interestingly enough *the legislature has never immunized such corporations,* quite the contrary a review of the Colorado Revised Statutes, Chapter 31, relating to Corporations, reveals under Article 2 the general corporation power to *sue and be sued.* More importantly Article 19 relating to *non-profit corporations* also grants the power to *sue and be sued.* Thus, legislatively, Colorado does not recognize immunity—*though imposing it judicially and unconstitutionally.*

It is submitted that the doctrine of charitable immunity is a flagrant denial of due process and equal protection under both the Constitution of Colorado and Article XIV, Section 1 of the Constitution of the United States.

South Carolina adopted its present Constitution (App. 20-21) in 1895; and it provides mandatory *separation of powers,* Article I, Section 14; and control of corporations by the Legislature, Article IX.

Again, notwithstanding these constitutional edicts, the judiciary *legislated* the doctrine of charitable immunity into being, *nineteen years* after the adoption of the constitution, *Lindler v. Columbia Hospital,* 98 S.C. 25, 81 S.E. 512, holding a private corporation *totally immune* from tort suit when acting in its so-called charitable operations.

Interestingly enough, in addition to the constitutional mandates, above cited, the legislature of South Carolina *has never immunized private corporations from tort suit,* to the contrary Title 12 Section 101(2) of the Compiled Code of Laws of South Carolina provides *that all private corporations created under the Laws of South Carolina shall have the power to sue and be sued.*

A more flagrant example of judicial legislation is the holding of the courts that notwithstanding the existence of insurance a private corporation functioning in its so-called charitable area *is totally immune. Decker v. Bishop of Charleston, S. C.*, 147 S.E.2d 264 (1966).

However, the ultimate of judicial legislation is the holding of the South Carolina Courts that the judicially legislated doctrine of charitable immunity applies *to employees of the so-called charity* contrary to the State's Workmen Compensation Laws. *Caughman v. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788. This in the face of the Workmen's Compensation Statute validly passed by the legislature wherein in Title 72, Section 13 *Employment* is defined as follows:

> *Employment.* The term employment *includes* employment *by the State,* all political subdivisions thereof, all public and quasi public corporations therein, *and all private employments* in which fifteen or more employees are regularly employed in the same business or establishment, except in agriculture and domestic service.

The state of the law in South Carolina is the grossest manifestation of judicial legislation, the grossest form of usurpation of legislative prerogatives, and the most heinous form of denial of due process and equal protection under the Constitution of South Carolina and Article XIV, Section 1 of the Constitution of the United States.

Alabama's Constitution (App. 21-22) was adopted in 1901, and by Article III there is a mandatory provision for the *separation of powers* of government. Further, Article XII Sec. 229 reserves control of corporations to the legislature, while Sec. 240 provides that *all* corporations shall have the power to *sue and be sued like natural persons.*

Yet in the case of *Tucker v. Mobile Infirmary Ass'n,* 191 Ala. 572, 68 So. 4, decided *seventeen years* after the adoption of the constitution, the judiciary again committed a transgression—again legislated—again blatantly usurped legislative powers, flew in the face of the constitutional require-

ments Article XV Sec. 229, namely, that *all* corporations shall have power to *sue and be sued.* By flagrant unilateral judicial action the doctrine of charitable immunity was imposed upon persons within the state to the extent that the so-called *charity* or *non-paying* patient *could not recover damages for tort.* This continues to be the law today.

Again it is submitted this judicial action is a flagrant violation of the guarantees of the Alabama Constitution, Article I, Secs. 13, 21, 36; Article III, Article XII Secs. 229 and 240, and 241 and are denials of due process under the Constitution of Alabama and Article XIV Section 1 of the Constitution of the United States.

Again in Tennessee where the Constitution (App. 22-24) was adopted in 1870, Article II, Sections 1 and 2 mandatorily provide for the *separation of powers,* and Article XI, Section 8 reserves the *control of corporations to the legislature.* Further, Section 2 of Article XI provides that nothing may impair the validity of *any suit, actions, or rights of actions.*

Tennessee is another jurisdiction where there was judicial transgression, where there was judicial legislation to impose on the victims of charitable negligence not only the burdens of their injuries but also unconstitutionally the economic consequences thereof.

In *Abston v. Waldon Academy,* 118 Tenn. 24, 102 S.W. 351, decided *thirty-seven* years after the adoption of the Tennessee Constitution, the judiciary blatantly usurped to itself legislative powers and held that though a charitable institution could be sued *none of the property of the private corporation used in its so-called charitable works could be attached.*

The charter of the Waldon Academy specifically provided that it could *sue and be sued,* yet the courts render that right a *total nullity* by its decision. This is still the law in Tennessee.

Interestingly the Legislature *has never immunized private corporations,* and by Article I, Section 17 the Constitution *even recognizes the right of suit against the State.* Thus immunity in Tennessee is not an accepted doctrine, either by the constitution or its general laws.

A review of the Tennessee Code, Annotated, Corporations reveals no section granting immunity, on the contrary Title 48 Section 117 reveals that private corporations shall have the power *to sue and be sued.*

Tennessee, consistent with the vogue of the times, through its over-zealous courts, adopted the charitable immunity doctrine, cavalierly *ignoring its own constitutional provisions,* and with impunity wiping out or ignoring valid legislative acts authorizing private corporations *to sue and be sued.*

Again it is submitted that this is a flagrant denial of due process and equal protection of the laws under the Constitution and laws of Tennessee, as well as Article XIV, Section 1 of the Constitution of the United States.

The Constitution of Massachusetts (App. 24-25) adopted in 1780, also provides for the *separation of powers* of Government by Part First, Article XXX. In addition, the constitution of Massachusetts provides the usual guarantees of equality of rights, Part First, Article I, and the guarantee of remedy for all injuries to person, Part First, Article XI. As in all states discussed, the legislature has the power of authorizing corporations, and the control over amending, modifying or repealing the corporate charters.

Massachusetts has the dubious distinction of being the progenitor of the *charitable immunity* doctrine in the United States. The first case to decide, by *judicial legislation,* that *private corporations* doing so-called charitable works were immune from tort suit was, *McDonald v. Massachusetts General Hospital,* 120 Mass. 432, 21 Am. Rep. 529 (1876).

The Massachusetts General Hospital was a private corporation incorporated by the *Acts of the Massachusetts Legislature of 1811*, passed February 25, 1811, Chapter 94, at pages 339-342.

Among the powers of the said private corporation, in *clear, unambiguous and positive language* is the power—*to sue and be sued.*

The Court in its consideration of the *McDonald case, supra, never discussed or even considered the charter* of this corporation, *which charter manifested the legislature's intent*—the legislature in which was vested, and which had the only authority to make or pass laws.

Thus, the judiciary, placing itself above the mandatory constitutional requirements of *separation of powers,* decided what was desirable and *legislated the charitable immunity* doctrine into existence.

This act of the Massachusetts judiciary, which continues to be invoked to the present, was not only a flagrant violation of the requirements of *separation of powers,* but was, further, a most flagrant violation of the constitutional guarantees of *equality and remedy* under the Constitution of Massachusetts, and a denial of due process and equal protection of the laws guaranteed by Article XIV, Section 1 of the Constitution of the United States.

The foregoing analysis of states adhering to the doctrine of charitable immunity is necessarily brief, however, there are a number of other states falling within the same category of judicially imposing the not only *unconstitutional,* but *totally invalid* doctrine of *charitable immunity,* contrary to provisions requiring *separation of powers, legislative control of corporations,* and *guarantees of rights of the person.*

It is therefore submitted that a decision in the instant case involves more than the resolution of a mere isolated problem, or single case, but has a substantial public interest, and will have a material far-reaching effect on the rights of persons in a large number of states in the future.

## SUMMARY

The doctrine has been attacked by the text writers as an anachronism, every state that has discarded the doctrine has done so in the strongest of terms, *President & Directors of Georgetown College v. Hughes*, 130 F.2d 810 (P. 13), *Bing v. Thunig*, 2 N.Y.2d 660, 163 N.Y.S.2d 3 (P. 14).

The logical question then is, why has this doctrine been so reviled in jurisdictions that have abrogated it, or have chosen not to accept it? The answers are simple. The doctrine is *totally alien* to *our basic constitutional concepts;* the doctrine was *imposed judicially, without foundation in law or fact;* and though never raised before the foregoing brief analysis clearly shows in each case, constitutionally:

1. That in each instance the judiciary transgressed the mandatory constitutional provisions of separation of powers.

2. That in every instance constitutional control over corporations is exclusively the preserve of the legislature.

3. That in every instance no immunity was granted to private corporations by the legislature.

4. That in every instance either by constitution or by general laws all private corporations have the right *to sue and be sued.*

The doctrine of charitable immunity is one of the most poignant examples of the courts' failure to look to its constitution and general laws and to apply them; and even more serious the courts' *unconstitutionally legislating* what they deemed desirable, contrary to valid legislation.

In the few instances where a court approached its task with diligence and perception, where the court looked to its laws and constitution, the results have been dramatically different, and the doctrine of charitable immunity was either never accepted or forthwith abrogated.

> "Title 10 of the Rev. Code deals with corporations and Sec. 10-0101 provides: 'The provisions of this

> title shall *apply to all corporations* other than public corporations, unless from the context of any statute a different intention plainly appears. This title provides (Sec. 10-0101) that, '*Every corporation has such power * * * to sue and be sued in any court* * * *' Chap. 10-108 of the title refers to *benevolent corporations not organized for profit; and nowhere do we find any exemption from liability for torts of agents.*" *Rickbeil v. Grafton Deaconess Hospital,* 74 N.D. 525, 23 N.W.2d 247 (see also *Nicholson v. Good Samaritan Hospital,* (Fla.) 199 So. 344; *Noel v. Menninger Foundation,* 175 Kan. 751).

It is submitted, from the foregoing, that in the State of Maryland, and those few states analyzed herein, that the doctrine of *charitable immunity* is a *total nullity.* The doctrine was invoked by the judiciary, in each instance transgressing the *separation of powers provisions, exclusive right of the legislature to control corporations,* and contrary to *valid* legislation granting to private corporations the right *to sue and be sued* (either by general laws, charters, or contrary to Constitutional provisions guaranteeing suit against private corporations).

This usurpation of powers and judicial legislation it is submitted is a most flagrant denial of due process under the various state constitutions, and a denial of due process and equal protection of the laws under Article XIV, Section 1 of the Constitution of the United States.

## CONCLUSION

For the foregoing reasons, petitioners respectfully request that their motion for rehearing be granted, and the Court issue a writ of certiorari to the Fourth Circuit Court of Appeals.

Respectfully submitted,

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## CERTIFICATE

I hereby certify that the foregoing petition for rehearing is presented in good faith, and not for delay and that it is restricted to grounds specified in Rule 58(2) of the Rules of this Court.

D. Robert Cervera

# APPENDIX

## ACTS OF THE LEGISLATURE OF THE GENERAL ASSEMBLY OF MARYLAND OF 1830, CHAPTER 64, INCORPORATING THE HOUSE OF REFUGE

Section 1. Be it enacted by the General Assembly of Maryland that Ebenezer L. Finley, David Hoffman, Alexander Fridge, John H. B. Latrobe, Charles F. Mayer, Christian Keener, Jess Hunt and all such persons now, are or shall hereafter become subscribers to said association, in the manner hereinafter provided, be and they are hereby incorporated and made a body of politic in law, by the name, style and title, of *The House of Refuge*, and by that name, style and title shall have perpetual succession, with the power to have a common seal, and to change the same at pleasure; to make contracts relative to said institution, *to sue and be sued*, and by that name and style be capable in law of puchasing, taking, holding and conveying, any estate, real or personal, for the use of said corporation; and also to establish by-laws and orders for the regulation of said institution, and the preservation and application of the funds thereof.

Section 13. And be it enacted That an unlimited right is hereby reserved to the state, after the said sum of twenty thousand dollars shall have been paid to the said managers out of the profits aforesaid, to modify or repeal any provision of this act; and to regulate by law the government of the aforesaid House of Refuge, or also to abolish said institution or corporation.

## CONSTITUTION OF MARYLAND OF 1867

### DECLARATION OF RIGHTS

Article 8—Separation of Powers. That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

LEGISLATIVE DEPARTMENT

Article III, Section 48. Corporations. Corporations may be formed under general laws, but shall not be created by special Act, except for municiapl purposes and except in cases where no general law exist, providing for the creation of corporations of the same general character, as the corporation proposed to be created; and any act of incorporation passed in violation of this section shall be void. All charters granted, or adopted in pursuance of this section, and all charters heretofore granted and created, subject to repeal or modification, may be altered, from time to time, or be repealed; Provided, nothing herein contained shall be construed to extend to Banks, or the incorporation thereof. The General Assembly shall not alter or amend the Charter, of any Corporation existing at the time of the adoption of this Article, or pass any other general or special law for the benefit of such Corporation, except upon the condition that such Corporation shall surrender all claim to exemption from taxation or from the repeal or modification of its Charter, and that such Corporation shall thereafter hold its Charter subject to the provisions of this Constitution; and any Corporation chartered by this State which shall accept, use, enjoy, or in any use avail itself of any rights, privileges or advantages that may hereafter be granted or conferred by any general or special Act, shall be conclusively presumed to have thereby surrendered any exemption from taxation to which it may be entitled under its Charter, and shall be thereafter subject to taxation as if no such exemption has been granted by its Charter.

## CONSTITUTION OF WYOMING OF 1890

ARTICLE I. DECLARATION OF RIGHTS

Section 2. Equality of all. In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.

Section 6. Due Process. No person shall be deprived of life, liberty or property without due process of law.

Section 8. Courts open to all. All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

ARTICLE II. DISTRIBUTION OF POWER

Section 1. Departments of Government. The powers of government of the state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons charged with the exercise of power belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

ARTICLE X. CORPORATIONS

Section 1. The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended, or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this state may as to such business be regulated, limited or restrained by law not in conflict with the Constitution of the United States.

Section 2. Damages; no limit. No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employee waiving any right to recover damages for causing the death or injury of any employee shall be void. As to all extra hazardous employments the legislature shall provide by law for the accumulation and maintenance of a fund or funds out of which shall be paid compensation as may be fixed by law according to proper classifications to each person injured in such employment or to the dependent families of such as die as the result of such injuries, except in cases of injuries due solely to the

culpable negligence of the injured employee. Such fund or funds shall be accumulated, paid into the state treasury and maintained in such manner as may be provided by law. The right of each employee to compensation from such fund shall be in lieu of and shall take the place of any and all rights of action against any employer contributing as required by law to such fund in favor of any person or persons by reason of any such injuries or death.

## CONSTITUTION OF COLORADO OF 1876

### ARTICLE II. BILL OF RIGHTS

Section 6. Equality of Justice. The Courts of Justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and right and justice should be administered without sale, denial or delay.

Section 25. Due Process. No person shall be deprived of life, liberty, or property without due process of law.

### ARTICLE III. DISTRIBUTION OF POWERS

The powers of Government of this State are divided into three distinct departments—The Legislative, Executive, and Judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

### ARTICLE XV. CORPORATIONS

Section 2. Corporate charters created by general law. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the State; but

the General Assembly shall provide by general laws of the organization of corporations hereafter to be created.

Section 3. Power to revoke, alter, or annul charter. The General Assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators.

## CONSTITUTION OF SOUTH CAROLINA OF 1895

### ARTICLE I. DECLARATION OF RIGHTS

Section 5. Privileges and immunities; protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.

Section 14. Departments separate. In the government of this State the legislative, the executive, and the judicial powers of the Government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

Section 15. Courts; remedy. All Courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.

### ARTICLE IX. CORPORATIONS

Section 2. Charter of incorporation. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal, or reformatory corporations as may be under the control of the State, or may be provided for in this

Constitution, but the General Assembly shall provide for general laws for changing or amending existing charters, for the organization of all corporations hereafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration; Provided, That the General Assembly may by two-thirds vote of each House on a concurrent resolution allow a Bill for a special charter to be introduced, and when so introduced may pass the same as other Bills.

## CONSTITUTION OF ALABAMA OF 1901

### ARTICLE I. DECLARATION OF RIGHTS

Section 13. Judicial remedies. That all courts shall be open; that every person, for any injury done to him, in his lands, goods, person, or reputation shall have remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.

Section 21. Suspension of laws. That no power of suspending laws shall be exercised except by the Legislature.

Section 36. Reserved rights. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

### ARTICLE III. DISTRIBUTION OF POWERS OF GOVERNMENT

Section 43. Separation of powers. In the government of this State, excepted instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial

shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

ARTICLE XII. CORPORATION

Section 229. General corporate law. The legislature shall pass no special act conferring corporate powers, but it shall pass general laws under which corporations may be organized and corporate powers obtained, subject nevertheless to, repeal and the will of the legislature; and shall pass general laws under which charters may be altered or amended. The legislature shall by general law, provide for the payment to the State of Alabama of a franchise taxed by corporations organized under the laws of this State, which shall be in proportion to the amount of capital stock; but strictly benevolent, educational, or religious corporations shall not be required to pay such a tax. The charter of any corporation shall be subject to amendment, alteration or repeal under general laws.

Section 240. Corporate right to sue and be sued. All corporations shall have the right to sue, and shall be subject to be sued, in all courts and liked cases as natural persons.

Section 241. Definition of corporation. The term "corporation" as used in this Article shall be construed to include all joint stock companies, and all associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

## CONSTITUTION OF TENNESSEE OF 1870

ARTICLE I. DECLARATION OF RIGHTS

Section 6. Trial by Jury. That the rights of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification of jurors.

Section 8. No man to be disturbed but by law. That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges or outlawed, or exiled, or in any

manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

Section 17. Courts shall be open; redress of injuries, suits against the State. That all courts shall be open, and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay; suits may be brought against the state in such manner and in such courts as the legislature may by law direct.

ARTICLE II. DISTRIBUTION OF POWERS

Section 1. Division of Powers. The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.

Section 2. No person to exercise powers of more than one department. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

ARTICLE XI. MISCELLANEOUS PROVISIONS

Section 2. No rights, contracts, action, etc. Nothing contained in this Constitution shall impair the validity of any debts, or contracts, or affect any rights of property or any suits, actions, rights of action or other proceedings in Courts of Justice.

Section 8. General laws only to be passed; corporations only to be provided for by general laws. The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general law of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be by the same law extended to any member of the community, who may be able to bring

himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws, but the General Assembly shall provide by general laws for the organization of all corporations hereafter created, which laws may at any time be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested.

Section 16. Bill of Rights to remain inviolate. The declaration of rights hereto prefixed is declared to be part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgressions of the high powers we have delegated, we declare that everything in the Bill of Rights contained, is excepted out of the General powers of government, and shall forever remain inviolate.

## CONSTITUTION OF MASSACHUSETTS OF 1780

### Part First

### ARTICLE I. EQUALITY OF NATURAL RIGHTS OF ALL MEN

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

### ARTICLE XI.

Every subject of the commonwealth ought to find a certain remedy by having recourse to the laws; for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, without being obliged to purchase it; completely and without any denial; promptly, and without delay; conformably to the law.

## ARTICLE XXX. SEPARATION OF EXECUTIVE, JUDICIAL AND LEGISLATIVE DEPARTMENTS

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative or judicial powers, or either of them: the judicial shall never exercise the legislative or executive powers, or either of them: to the end it may be a government of laws and not of men.